



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

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December 17, 2019

Ms. Linda Palles Thompson, Superintendent
Peoria Unified School District
6330 W. Thunderbird Rd.
Glendale, AZ 85306

Sent via email to xxx

Re: Peoria Unified School District
OCR Case Number: 08-19-1415

Dear Ms. Palles Thompson:

This letter advises you of the resolution of this complaint, filed against Peoria Unified School District (the District). Specifically, the Complainant alleged that the District denied students with learning disabilities, including his client's children, the opportunity to be placed in classrooms that include a "gifted cluster" at **XXXX** School.

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

In the initial stage of investigating this case, OCR has reviewed information provided by the Complainant, interviewed the Complainant and his client, reviewed documentation provided by the District, and discussed the allegation with the District's representative. After reviewing this information, OCR learned the following about the District's practices:

- The District utilizes a "cluster grouping" model for delivering specialized services to elementary students identified as gifted.
- Under this model, students are placed into one of five groups based on academic achievement, and then the groups are used to create balanced classrooms. All of the gifted students in a given grade level are placed in the same classroom with a specially trained teacher. Students in the other groups are distributed among the classrooms, including the gifted cluster classroom. The idea is to ensure that each classroom has a range of ability levels, but no classroom has the full spectrum of ability levels. Under this model, the lowest achieving students are not placed in the gifted cluster classroom,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

and the highest achieving non-gifted students are also not placed in the gifted cluster classroom.

- The documents provided by the District do not state whether students with learning disabilities (who are not also identified as gifted) should automatically be placed in a specific group. As the policy was implemented at **XXXX**, students with learning disabilities were not considered for placement in the gifted cluster classroom.

We also learned the following information about the student named in the allegation, the child of the Complainant's client (referred to herein as Student and Parent):

- The Student has an IEP for **XXXX**.
- The Parent made a request for a specific **XXXX** teacher for the 2019-20 school year, based on recommendations she received from the Student's private tutor.
- The Complainant alleged that the school principal refused to consider placing the Student with the requested teacher, because she was the gifted cluster teacher and students with IEPs for **XXXX** could not be placed in the gifted cluster classroom.
- After the Parent filed a complaint with the District, the principal placed the Student in the requested teacher's classroom for the 2019-20 school year.
- The Complainant alleged to OCR that while the principal placed the Student with the requested teacher, she also moved all of the gifted students out of that classroom, ensuring that a student with **XXXX** would not be in the gifted cluster classroom.
- The District provided OCR with class lists for all the **XXXX** classrooms at the school, showing which students had disabilities and which students were gifted. The lists show that at the **XXXX** level, there are currently two gifted cluster classrooms. The District's policies provide that if there are a large number of gifted students in a grade level, there may be two gifted cluster classrooms for the grade level. The student is in one of the gifted cluster classrooms, along with seven gifted students.

With regard to portion of the allegation involving the Student, OCR finds that because the Student was placed with the requested teacher, in a gifted cluster classroom, this allegation has been resolved. When OCR receives credible information that an allegation is currently resolved and no longer appropriate for investigation, OCR will dismiss the allegation pursuant to Section 108(j) of our *Case Processing Manual*.

With regard to the portion of the allegation involving the implementation of the gifted cluster model at **XXXX**, during the course of our investigation, the District indicated its desire to voluntarily enter into an agreement to resolve the complaint allegations pursuant to Section 302 of our *Case Processing Manual*. On December 16, 2019, prior to OCR completing its investigation or making any findings of fact, OCR received an Agreement signed by the District which, when fully implemented, will address the issues raised in the complaint.

In accordance with Section 302 of OCR's *Case Processing Manual* (CPM), the provisions of the Agreement signed by the District, when fully implemented, will address all of the allegations investigated and are consistent with the information obtained during OCR's processing of this case, and consistent with the applicable regulations. Therefore, OCR is closing this complaint

investigation effective the date of this letter. OCR, however, will actively monitor the District's implementation of the Agreement until the District fulfills the terms of the agreement and is in compliance with the statutes and regulations at issue in this case. If the District fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegations. A copy of the Agreement is enclosed.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment. In addition, the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact **XXXX XXXX**, the attorney assigned to this case, at (303) 844-**XXXX** or **XXXX**@ed.gov. You also may contact me at (303) 844-5942.

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

Enclosure: Signed Resolution Agreement

Cc: Jason Reynolds, Deputy Superintendent (via email)